

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	EFFECTIVE DATE 12/26/1997	NUMBER 02.02.102
	SUPERSEDES 02.02.102 (05/15/89); DOM 1997-14	
SUBJECT LEAVE OF ABSENCE	AUTHORITY MCL 791.203; Family and Medical Leave Act of 1993; Civil Service Rules; Appropriate Collective Bargaining Unit Agreement	
	ACA STANDARDS 3-4048; 3-4090	
	PAGE 1 OF 5	

POLICY STATEMENT:

Employees may take a leave of absence for specific purposes identified in this policy as authorized by the Department of Civil Service, and the Family and Medical Leave Act (FMLA) and its implementing regulations. This policy is only intended to generally advise employees of their rights and obligations under FMLA, and is not intended to diminish rights or obligations that might otherwise be detailed in the Act or collective bargaining unit agreements.

POLICY:

DEFINITIONS

- A. Health Care Provider - An M.D., D.O., podiatrist, dentist, psychiatrist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, Social worker, M.S.W. or C.S.W, authorized to practice under state law, and Christian Science practitioners listed with the First Church of Christ, Scientist, in Boston, Massachusetts, or other health care providers covered under the State Health Plan.
- B. Medical Certification - Documentation by a health care provider which provides information regarding the employee's serious health condition as outlined on the form provided by the Department.
- C. Serious Health Condition - Illness, injury, impairment, temporary disability or mental condition that involves overnight inpatient care and treatment connected with inpatient care, or an absence of more than three calendar days from work with continuing treatment by a health care provider, or involves continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that it would likely result in more than three days of incapacity if not treated.
- D. Waived Rights Leave of Absence - A leave of absence without pay which protects employee's continuous service record, and any benefits connected with length of service but does not require that the department accept the employee back to work upon expiration of the leave.
- E. Leaves of absence without pay are governed by the provisions of the FMLA and its implementing regulations, by Department of Civil Service Rules and Procedures, and by the appropriate collective bargaining agreements. The FMLA does not diminish the obligation of the Department to comply with Department of Civil Service Rules which provide greater leave benefits than those provided in the Act. Approved leaves which extend beyond the FMLA entitlement shall be governed by this policy, Department of Civil Service Rules and Procedures, or collective bargaining unit agreements.
- F. Exclusively represented employees shall be governed by their collective bargaining agreement when in conflict with this policy.
- G. The appropriate personnel office shall ensure that an approved leave of absence without pay is entered into the employee's employment history in the Personnel Payroll Information System for Michigan (PPRISM), including the beginning and ending dates of the leave. Appropriate documentation supporting the leave shall be maintained specific records relative to leaves of absence or FMLA covered leave, including timekeeping documents, leave documents, medical certification if applicable, and records of premium payments for 3 years or in accordance with the Department's Retention and

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 12/26/1997	NUMBER 02.02.102	PAGE 2 OF 5
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Disposal Schedule.

SPECIFIC FMLA PROVISIONS

- H. The FMLA entitles an eligible employee to take a leave of absence for up to 12 workweeks during a twelve month period for the following:
 - 1. Parental leave of absence for the birth, adoption or foster care placement of a child in the employee's home;
 - 2. Family care leave of absence for the care of the employee's parent, spouse, son or daughter with a serious health condition;
 - 3. Medical leave of absence for an employee's own serious health condition.
- I. An employee is eligible to take leave under the FMLA if s/he:
 - 1. Has been employed by the state for at least 12 months, and has worked at least 1250 hours during the previous 12 months.
 - 2. Has not exhausted his or her 12-week per 12-month period FMLA entitlement.
- J. An employee requesting medical, parental or family care leave under the FMLA shall provide 30 days notice prior to the beginning of the leave if the leave is for a foreseeable condition, or such notice as is practicable if the condition is unforeseeable. For all health related leaves under the FMLA, the Department may require medical certification confirming the serious health condition of the employee or family member and indicating the need for leave and expected duration.
- K. For all leaves under the FMLA, the supervisor or personnel office will notify the employee within three days when the leave will be counted, or provisionally counted, as part of the FMLA entitlement. Written notice shall be provided to the employee at the time the leave is requested or when it is determined to be an FMLA qualifying leave. The notice shall, if applicable, advise the employee that medical certification must be provided within fifteen days of receipt of the notice or the leave may be delayed or denied. If a leave has not been designated as FMLA, an employee who desires the leave be counted, must notify the supervisor or personnel office within 2 business days of returning to work that the leave was for an FMLA reason.
- L. Under the FMLA, the employee may elect, or the Department may require the employee to use accrued leave credits for all or part of the 12-week FMLA entitlement. If the employee does not elect to use accrued leave credits, and the Department does not require it, the employee and the Department may continue paying their respective share of health care premiums for the leave up to the 12-week FMLA entitlement. If an extension of the leave is granted beyond the 12-week FMLA entitlement, the Department's share of the health care premiums shall not continue.

PARENTAL LEAVE OF ABSENCE

- M. Upon written request, an eligible employee may be granted parental leave of absence for up to six months after the birth or adoption of a child, or up to 12 weeks for the foster care placement of a child in the home. Up to 12 weeks of the parental leave may count toward the FMLA entitlement as set forth in Paragraph I. The leave must begin and end within 12 months after the birth, adoption or foster care placement of the child.
- N. If a parental leave for the birth or adoption of a child is less than six months in length, but greater than 12 weeks, the Department may grant an extension, upon request, for a total of six months combined leave including the extension. The extension is not covered under the FMLA.

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 12/26/1997	NUMBER 02.02.102	PAGE 3 OF 5
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- O. If both parents are employed by the State, parental leave may be taken concurrently or consecutively. The employee must provide certification of birth, adoption or foster care placement, upon request. An employee may elect to use accrued annual leave credits in lieu of an unpaid leave under FMLA only. Use of leave credits must be requested prior to the expiration of the approved leave.

FAMILY CARE LEAVE OF ABSENCE

- P. Pursuant to the provisions of FMLA only, an eligible employee may, upon written request and with appropriate documentation, be granted a family care leave of absence for up to 12 weeks to care for the employee's spouse, parent, son or daughter who has a serious health condition. Up to 12 weeks of the family care leave shall count toward the FMLA entitlement as set forth in Paragraph I.
- Q. An employee is eligible for such leave under the provisions of FMLA only. The initial request may be for up to 30 calendar days. The Department may grant an extension, upon request, for a total of 12 weeks combined leave.
- R. An employee may elect to use accrued leave credits in lieu of an unpaid leave. Sick leave credits must be depleted to a balance of 80 hours prior to the start of an unpaid family care leave of absence. Use of leave credits must be requested prior to the expiration of the approved leave.

MEDICAL LEAVE OF ABSENCE

- S. Upon written request and with appropriate documentation, an eligible employee shall be granted a medical leave of absence for his or her own serious health condition.
- T. Within fifteen days of commencing leave, the employee shall provide the medical certification form provided by the Department from a health care provider and shall also include the following information:
 - 1. The need for leave;
 - 2. Confirmation of the serious health condition;
 - 3. The expected length of the leave;
 - 4. The employee's current physical abilities and limitations.
- U. The medical leave shall not be approved without certification by a health care provider. The employee shall be required to return to work as scheduled if the medical leave is not approved. Failure to return to work shall result in termination of employment.
- V. The length of an approved leave of absence may be based on the medical certification and the department's ability to accommodate any physical limitations. A medical leave of absence shall not initially exceed 12 weeks, but may be extended for a total of six months leave if medical certification from a health care provider indicates the employee will be able to return to work after the extension.
- W. The Department may require a second medical opinion or job analysis at any time at its own expense when the employee's original medical certification or subsequent ability to return to work is questioned. The Department may require a third medical opinion at its own expense when the first and second medical opinions conflict. The third opinion shall be provided by a mutually agreed upon health care provider and shall be the binding opinion.
- X. An employee may elect to use leave credits in lieu of an unpaid leave only if the leave is designated as FMLA. Sick leave credits must be exhausted prior to the start of an unpaid medical leave of absence. Use of leave credits must be requested prior to the expiration of the approved leave.
- Y. Before an employee may return from a medical leave of absence, s/he must provide certification from a

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 12/26/1997	NUMBER 02.02.102	PAGE 4 OF 5
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health care provider authorizing the return and identifying any continuing physical limitations.

MILITARY LEAVE OF ABSENCE

- Z. A military leave of absence without pay shall be granted to a classified employee to fulfill a military obligation in the armed forces of the United States, in accordance with Department of Civil Service Rule 2-5.3. An employee requesting a military leave shall provide advance notice as soon as possible and a true copy of military orders. State service credits shall be allowed for the period of the military leave of absence. Military leaves are not covered under the provisions of the FMLA.

EDUCATION LEAVE OF ABSENCE

- AA. An employee in a permanent position may be granted an education leave of absence without pay upon written request, if the area of study relates to corrections or the employee's job. The request shall include a written statement of the employee's intent to return to the department at the end of the leave, proof of full-time student status, and documentation that the area of study relates to the field of corrections or the employee's job. No education leave of absence shall be granted without prior written approval of the Director. Education leaves are not covered under the provisions of the FMLA.

DENIAL OF LEAVE

- BB. Military leaves shall not be denied to employees who provide the proper documentation. Leaves covered under the FMLA (medical, parental, and family care) shall not be denied to eligible employees. Leave extensions may be granted by the Department, however, leaves beyond the 12-week FMLA entitlement shall not be covered by FMLA provisions.
- CC. The following factors, including the limitation set forth in Paragraph S, shall be considered before an extension is denied for a parental, family care, medical, or education leave:
1. Operational needs;
 2. Employee's length of service;
 3. Employee's performance record;
 4. Employee's medical condition and ability to return to work in the future (medical leave of absence only);
 5. Employee's leave of absence history;
- DD. If the leave or extension request is denied, the employee shall be informed in writing of the reason for the denial.

RETURN FROM LEAVE

- EE. An employee on an approved leave of absence may request an early termination of the leave or may request an extension of the leave. Except as otherwise provided for FMLA leaves, approval of extension or early termination is at the sole discretion of the Department.
- FF. Employees shall be returned to work, in the position formerly occupied or one of equal responsibility, at the end of an approved leave of absence, other than a waived rights leave of absence, pursuant to provisions of the FMLA or Department of Civil Service Rules. An employee's unapproved absence may result in termination of employment.
- GG. An employee who is unable to return to work at the end of an approved medical leave of absence may request and be granted a waived rights leave of absence for up to one year, in accordance with

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 12/26/1997	NUMBER 02.02.102	PAGE 5 OF 5
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Department of Civil Service Rules. An employee who is unable to return due to medical reasons from an unpaid leave of absence and does not request a waived rights leave of absence shall have his or her employment terminated.

- HH. If an employee does not return within three days after expiration of an unpaid leave of absence, it shall be considered vacating the position and the employee shall be terminated from employment as a result. If the leave was considered under the FMLA, the Department may recover its share of any health care premiums paid as set forth in Paragraph L.

OPERATING PROCEDURES

- II. The Central Office of Personnel and Labor Relations shall ensure that within 60 days of its effective date procedures implementing this policy directive are developed and forwarded to the appropriate Deputy Director for approval.

AUDIT ELEMENTS

- JJ. A Primary Audit Elements list has been developed and will be provided to Wardens, Regional Administrators and Personnel Officers to assist with self-audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures."

KLM:OPH:12/03/97